

## **105.18 CLAIM REVIEW BOARD SPECIFICATIONS (STATEWIDE STANDING BOARD)**

### **GENERAL**

#### **Definitions**

**CRB** – See Claim Review Board.

**Contract** – The construction contract.

**Claim** – A construction claim that has been properly filed according to the contract.

**Claim Review Board** – A board of three neutral individuals selected by the Department in cooperation with representatives of the Idaho highway construction industry.

#### **Summary**

One or more CRB's will be established to assist in the review of Claims in connection with, or arising out of, performance of the work of the Contract. The CRB will be available to hear Claims arising from all construction contracts statewide.

The CRB will be available for Claims that have been appealed to the Chief Engineer level of review per Subsection 105.17 of the Standard Specifications. CRB review will not be available for Claims on those projects where a DRB was established to review disputes.

A claim will be referred to the CRB when requested by either the Contractor or the Department and agreed to by both.

Utilization of the CRB does not relieve the Contractor or the Department from complying with all Contract terms and conditions, and does not waive any notice or timeliness requirements per Subsection 105.17. However, if a Claim is referred to the CRB, the Claim submittal time frames and the review time frames of Subsection 105.17 may be revised by mutual written agreement of the Contractor and the Department or if they are unable to agree, shall be established by the Department.

The CRB will promptly and impartially consider the Claim or Claims referred to it. The CRB will provide non-binding written findings and recommendations of its Claim review to the Contractor and the Department.

Although the findings and recommendations of the CRB should carry great weight for both the Contractor and the Department, they are not binding on either the Contractor or the Department. However, the findings and recommendations will be admissible in subsequent Claim resolution. (See "Admissibility" section herein.)

#### **Scope**

This specification describes the purpose, procedure, function, and features of the CRB. A Three-Party Agreement among the Department, Contractor, and the CRB members will formalize the involvement of

the CRB, and establish the scope of its review and the rights and responsibilities of the Contractor and the Department. In the event of a conflict between the Specification and the Three-Party Agreement, the latter governs. A suggested format for the Three-Party Agreement is attached as Appendix A.

## **Purpose**

The purpose of the CRB is to provide an independent and impartial review of the Claim, and provide non-binding written findings and recommendations based on the contract, applicable contract law, industry practices, and the facts presented.

It is not the purpose, or responsibility, of the CRB to resolve the Claim. However, it is anticipated that the CRB review will assist the Contractor and the Department in resolving the Claim.

Creation of the CRB is not intended as a substitute for Department or Contractor responsibility to make a good-faith effort to settle the Claim. Indiscriminate referral of claims to the CRB without prior attempts by the Contractor and the Department to resolve them shall be avoided.

## **Continuance of Work**

Both the Contractor and the Department shall proceed diligently with the work and comply with all applicable contract provisions while the CRB considers a Claim.

## **Tenure of CRB**

The CRB's involvement in any Claim commences when the Department, the Contractor, and the members of the CRB have executed the Three-Party Agreement (Appendix A).

The CRB's involvement in each specific Claim will end as of the date the CRB submits its written findings and recommendations unless subsequent services, such as clarification, are required.

## **MEMBERSHIP**

### **General**

The CRB will consist of three members selected jointly by the Department and the Idaho highway construction industry. Alternate members will also be selected who can serve on the CRB panel in the event of a conflict of interest or other disqualification of one or more of the members in a particular case. One member will be selected by the CRB members to serve as Chairperson.

The members will serve three (3) year rotating terms with one member rotating off the CRB each year. The terms of the initial appointees to the CRB will be for one year for one member, two years for the second member, and three years for the third member as designated by the letter of appointment. Thereafter, the terms of all subsequent appointments or reappointments shall be for terms of three years. All alternate members will serve three-year terms.

A one-member CRB can be convened to review a Claim or Claims on a particular project by the agreement of the Contractor and the Department and if the total amount claimed is less than one hundred thousand

dollars (\$100,000.00). Both the Contractor and the Department shall agree to the selection of one member of the CRB panel to serve as the one-member CRB in such cases.

## Criteria

### Experience

It is desirable that all CRB members and alternates be experienced with the construction process including design, construction, contract administration, contract law, industry practices and resolution of construction claims.

It is not necessary that the CRB members be intimately familiar with the specific type of construction involved in the Claim. The CRB may consult technical experts under the provisions of Section 105.19 if the need arises.

All members of the panel shall have attended the one day DRB panel member workshop offered by the Dispute Review Board Foundation, or its substantial equivalent in other training, or shall be a qualified DRB panel member in another state which has training as a prerequisite to qualification for service on DRB panels.

### Neutrality

It is imperative that the CRB members be neutral, act impartially, and be free of any conflict of interest.

For purposes of this subparagraph, the term "members" also includes the member's current primary or full-time employer, and "involved" means having a contractual relationship with either the Contractor or the Department, or with another involved entity such as a subcontractor, architect, engineer, or construction manager.

### Prohibitions, disqualifying relationships for CRB members in general:

Any substantial financial interest involved in current ITD construction project that suggests partiality;

Any close professional or personal relationship with key employees of the Department, the State, or key representatives of the Idaho highway construction industry that suggests partiality;

Any past history with the Department, State, or representatives of the Idaho highway construction industry that suggests partiality.

### Prohibitions, disqualifying relationships for CRB members regarding the Claim and construction contract at issue:

An ownership interest in any entity involved in the construction contract, or a financial interest in the contract, except for payment for services on this CRB;

Pervious employment by, or financial ties to, any party involved in the construction contract within a period of one (1) year prior to award of the contract, except for fee-based consulting services on other projects;

A close professional or personal relationship with any key member of any entity involved in the construction contract which, in the judgment of either the Contractor or the Department, suggests partiality; or

Prior involvement in the construction contract of a nature that could compromise that member's ability to participate impartially in the CRB's activities;

Discussion concerning, or the making of, an agreement with any entity involved in the construction contract regarding employment after the Claim review is completed;

Any of the provisions of (1) through (5) above may be waived by mutual written agreement of the Contractor and the Department.

## **Disclosure Statement**

Prior to service on each individual Claim review, all CRB members will be required to submit complete disclosure statements for the approval of both the Contractor and the Department. Each statement shall include a declaration describing all past, present, and anticipated or planned future relationships, including indirect relationships through the prospective member's primary or full-time employer, to this project and with all parties involved in the Contract, including subcontractors, suppliers, design professionals, and consultants. Disclosure of close professional or personal relations with all key members of all parties to the Contract shall be included.

## **Selection Process**

The Department, in consultation with representatives of the Idaho highway construction industry, will appoint three members and five alternate members to serve on the CRB. Typical candidates to serve in these positions will be retired or semi-retired, and experienced engineers, contractors, claim consultants, and construction attorneys.

The initial CRB will be formed in the following manner. The Department and the members of the Idaho AGC Highway Construction Committee (Contractor Representative) will jointly create a roster of interested potential members and alternates for appointment to the CRB. The roster will contain the names of no less than twelve individuals and include resumes of the persons named. Once the roster is created, the Contractor and the Department Representative will each nominate, in writing, four individuals from the roster. Both the Contractor and the Department will confirm the availability and willingness of their nominees to serve on the CRB as a member or alternate. The Contractor and the Department Representative will then each select one of the four individuals nominated by the other party to serve on the CRB and notify the other party of its selection. The Contractor or the Department will then meet to randomly select (draw a name out of a hat) the remaining CRB member from the remaining nominees. The remaining nominees not selected by this process to serve on the CRB will be appointed to serve as alternate members of the CRB. If additional alternate members are needed, they will be selected using a similar selection process as agreed to by the Contractor and the Department Representative.

The members of the CRB will select the Chairperson of the CRB.

If more than one CRB is to be established or if replacements are required for a CRB, such members will be randomly selected from among the alternate members previously selected using the process set forth above. Selection of replacement for the alternate members will be made using a similar selection process to that set forth above, or another process that is mutually agreeable to the Contractor and the Department Representative.

The appointment of any member of the CRB may be terminated by mutual agreement of the Contractor and the Department Representative at any time upon joint written notice to the member whose appointment is to be terminated and the other CRB members. Either the Contractor or the Department may remove any CRB member from the CRB at any time in a particular case by providing notice thereof to the member to be removed, the other party and the remaining members of the CRB, and stating the reasons for the decision to remove the member.

### **Three-Party Agreement**

Upon the agreement of the Contractor and the Department to submit a claim to the CRB, all three CRB members and the authorized representatives of the Contractor and the Department shall execute a CRB Three-Party Agreement (see Appendix A) for each claim referred to it.

## **OPERATION**

### **General**

In general, the CRB will operate in accordance with this Specification. However, it is not desirable to adopt hard-and-fast rules for the functioning of the CRB. The entire procedure shall be kept flexible to adapt to changing situations. The CRB shall establish, with the concurrence of the Department and the representatives of the Idaho highway construction industry that selected the CRB, new written procedures on modifications to such procedures whenever this is deemed appropriate. Additionally, the Department and the Contractor involved in each claim brought before the Board may agree in writing with the CRB on modifications or alterations to the procedures to be followed in the review of that particular Claim.

### **Periodic Meetings and Visits**

The CRB will not typically visit the project site or meet with the Contractor and the Department during the construction of the project. However, the CRB may visit the project site if they deem it advantageous or necessary. Representatives of both the Contractor and the Department shall accompany the CRB on the site visit. Meeting may be held by conference call, videoconference or any other means approved by the Contractor and the Department to minimize the time and expense involved in the process.

## **REVIEW OF CLAIMS**

### **General**

The Contractor and the Department will cooperate to ensure that the CRB considers Claims promptly, taking into consideration the particular circumstances and the time required to prepare appropriate documentation.

Procedures and time periods may be modified by mutual written agreement.

### **Prerequisites to Review**

A Claim may be referred to the CRB when:

It has been properly appealed to the Chief Engineer per the terms of the Contract, and

It has not previously had the opportunity to be reviewed by a DRB, unless the Contractor and the Department specifically waive this limitation in writing, advising the CRB of the reasons for the waiver.

### **Requesting Review**

Either the Contractor or the Department may request that a Claim be referred to the CRB for review. The Request for Review shall be submitted in writing to the other party within 20 calendar days of the Claim appeal to the Chief Engineer. Both the Contractor and the Department must agree to refer a Claim to the CRB.

The Request for Review shall state clearly and in full detail the specific issues of the Claim to be considered by the CRB, and include an estimate as to when the requesting party would be ready to submit its final position statement and Claim documentation to the CRB and the other party.

If the Contractor and the Department mutually agree to submit the Claim to a CRB, the Department will promptly submit the Request for Review to the CRB Chairperson.

After conferring with both the Contractor and the Department, the CRB Chairperson will establish a submittal schedule for the submission by both parties of the documentation in the Claim Record (see below), and for the submission of the parties' position statements so that adequate time is allowed for the submissions before the presentation.

### **Creation of the Claim Record for Review**

The Contractor will provide to each CRB member a complete copy of the Claim submittal, which shall be the same as the Claim submittal that was provided to the Department with the appeal to the Chief Engineer.

The Department will provide to each CRB member a set of plans and specifications and a copy of the Resident Engineer's Claim analysis and decision. The Department will also provide the CRB members and the Contractor a copy of the Chief Engineer's preliminary analysis of the claim(s) if any has been prepared.

The materials and documentation provided to the CRB by the parties under this section shall be considered the Claim Record for the CRB's review of the claim.

## **Scheduling Review**

The Three-Party Agreement will empower the CRB to schedule the presentations.

Upon receipt of a Request for Review, the Chairperson will schedule a presentation date.

## **Pre-presentation Requirements**

Concise written position statements shall be prepared by both the Contractor and the Department, with page number references to the Claim Record, and submitted to each CRB member and to the other party.

No documents, materials, reports, analysis or other information of any type shall be referenced in the position statement or considered by the CRB in its review unless the same is contained in the Claim Record.

The Contractor shall submit its position statement first, followed by the Department in accordance with the schedule established by the Chairman of the CRB.

## **Presentation**

Unless otherwise agreed by the Department, the Contractor, and the CRB, the presentation will be conducted at the offices of the Department Headquarters in Boise. Private deliberations of the CRB may be held at any convenient location.

The Contractor and the Department shall have representatives in attendance at all presentations. The Contractor will present its position first, followed by the Department. Each party will be allowed successive rebuttals until all aspects are fully covered. The CRB members and the Contractor and the Department may ask questions, request clarification, or ask for additional data. In difficult or complex cases, additional dates for presentations may be necessary in order to facilitate full consideration and understanding of all the evidence presented by both parties. Both the Contractor and the Department shall be provided adequate opportunity to present their evidence, documentation, and testimony regarding all issues before the CRB. No documents, materials, reports, analysis or other information of any type shall be referenced in the presentations or considered by the CRB in its review unless the same is contained in the Claim Record.

Unless otherwise agreed in writing by the Contractor and the Department, the position statements, presentations, and review will relate to the issue(s) of entitlement only. When the Contractor and the Department agree in writing that the CRB will review or give guidance on issues of quantum as well as entitlement, both the Contractor and the Department will complete the presentations on entitlement before quantum is presented.

Normally, a formal transcript of the presentations will not be prepared. When requested by either the Contractor or the Department, the CRB may allow recordation and transcription by a court reporter with the cost to be allocated as agreed by the Contractor and the Department. Such transcript, when prepared, will not constitute the official record of the CRB Review. The record prepared by the CRB shall be the official record of the CRB Review. The CRB may provide for audio or video recordings of the presentations for

CRB use only.

Attorneys will be allowed to attend the presentations, and will be allowed to make brief opening and closing remarks and advise their clients. No other participation by attorneys at the presentations will be permitted.

If either the Contractor or the Department fails to appear before the CRB on the date scheduled for the presentations without justifiable cause, the party that is in attendance shall prevail in their position on the Claim.

### **Deliberations**

After the presentation is concluded, the CRB will confer to formulate its findings and recommendations. All CRB deliberations shall be conducted in private, with all individual views kept strictly confidential from disclosure to anyone other than the members of the CRB.

### **Findings and Recommendations**

The findings and recommendations of the CRB concerning any Claim are non-binding but admissible (see Admissibility section below).

It is not the responsibility of the CRB to resolve the Claim. That responsibility remains with the Contractor and the Department. The findings and recommendations of the CRB shall be based upon the Contract, applicable contract law, industry practices and the facts. The CRB must also evaluate whether the burden of proof has been met.

The CRB's findings and recommendations will be provided in writing to both the Contractor and the Department, by certified mail return receipt requested, within 30 calendar days of the completion of the presentations. The CRB should set forth, as clearly as possible, the logic and reasoning behind its findings and recommendations. The findings and recommendations will address entitlement only, unless it is mutually agreed that the CRB will be asked to review or give guidance on issue(s) of quantum as well as entitlement. In difficult or complex cases, and in consideration of the CRB's schedule, this time may be extended by mutual agreement of the CRB, the Contractor and the Department.

If the CRB has been requested by the Contractor and the Department to review issues of quantum, and the exact value of the quantum cannot be determined expeditiously by the CRB, then quantum may be addressed in the CRB's analysis and findings and recommendations by providing guidelines to be used to determine the quantum. The Contractor and Department will then subsequently make the final determination of quantum. If there is still disagreement between the Contractor and the Department, then this disagreement may then be submitted back to the CRB for final analysis and findings.

If the CRB is unable to reach unanimity in its findings and recommendations, the Contractor and the Department will be advised of that fact in the report of the CRB. A dissenting member, in his/her discretion, may prepare a minority report to be included in the CRB report.

### **Acceptance or Rejection**

Within 7 calendar days of the date of the CRB's findings and recommendations, both the Contractor and



the Department will provide, by certified mail return receipt requested, written notice to the other and to the CRB of acceptance or rejection of the CRB's findings and recommendations. If, with the aid of the CRB's findings and recommendations, the Contractor and the Department are able to resolve their Claim, the Department will promptly process any required Contract changes.

If either the Contractor or the Department rejects the findings and recommendations of the CRB, the Claim will continue under the administrative process of Subsection 105.17. Subsequent Claim submittal time frames and review time frames may be revised by mutual written agreement of the Contractor and the Department or if they are unable to agree, shall be established by the Department.

### **Clarification and Reconsideration**

Should the Claim remain unresolved because of a bona fide lack of understanding of the findings and recommendations, either the Contractor or the Department may, within the 7 calendar day period following the date of the CRB's findings and recommendations, request in writing, by certified mail return receipt requested, that the CRB clarify specified portions of its findings and recommendations.

### **Admissibility**

If the CRB's findings and recommendations do not resolve the Claim, the Contract, the written analysis and findings and recommendations, including any minority report, and the qualifications of the CRB members will be admissible as evidence to the extent permitted by law in any subsequent Claim resolution proceeding or forum to establish (a) that a CRB considered the Claim (b) the qualifications of the CRB members, and (c) the CRB's findings and recommendations that resulted from the process.

### **Legal Relations**

Each CRB member in the performance of his or her duties on the CRB, is acting in the capacity of an independent agent and not as an employee of either the Contractor or the Department.

Each CRB member is acting in a capacity intended to facilitate resolution of Claims. Accordingly, the Contractor and the Department agree that to the fullest extent permitted by law, each CRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with the review and findings and recommendations for Claims referred to the CRB. No CRB member may be called as a witness by either the Contractor or the Department in subsequent proceedings on the Claim. Other than the findings and recommendations of the CRB, all records, proceedings and deliberations of the CRB are to be kept confidential to the fullest extent permitted by law. The CRB shall, upon completion of the project, turn all records of the CRB over to the Department for storage and preservation in accordance with Department policy and state law.

Each CRB member shall by agreement be held harmless for any personal or professional liability arising from or related to CRB activities. To the fullest extent permitted by law, the Contractor and the Department will indemnify all CRB members for claims, losses, costs, and damages (including reasonable attorney's fees) for bodily injury, property damage, or economic loss arising out of or related to the CRB members carrying out CRB functions. This indemnity is a joint and several obligation of the Contractor and the Department.

## **PAYMENT**

The Contractor and the Department shall bear the costs and expenses of the CRB equally.

Preauthorized Time spent On-Site, at Hearings, at Meetings, or Reviewing the Dispute away from the Project Site – Each CRB member will be compensated for actual time spent at the rate of \$125 per hour with a maximum of \$1,000 per day. This rate shall include all normal incidental expenses such as telephone, fax, postage, courier, printing, and computer services. The CRB activity must be preauthorized by both the Contractor and the Department.

Travel Time to and from Preauthorized Meetings – Each CRB member will be compensated for actual travel time to and from CRB meetings at the rate of \$50 per hour with a maximum of \$200 each way.

Travel Expenses – Travel expenses will be reimbursed at standard state of Idaho rates for transportation, lodging, and meals for each day, or portion thereof, that the CRB member is traveling to or from, or attending, an authorized CRB activity.

The Department will provide, at no cost to the Contractor, administrative services such as conference facilities and secretarial services for the CRB.

These special provisions and the Three Party Agreement contain all of the provisions for compensation and expenses of the CRB. All CRB members shall be compensated at the same daily and hourly rate.

The Contractor shall pay the invoices of all Board members after approval by both the Contractor and the Department. The Contractor will then bill the Department for one-half of such invoices. The Department will then promptly make payment to the Contractor.

There will be no markups applied to expenses connected with the CRB, either by the CRB members or by the Contractor when requesting payment of the Department's share of CRB expenses. Regardless of the CRB recommendation, neither the Department nor the Contractor shall be entitled to reimbursement of CRB costs from the other party.

If the CRB desires special services such as legal, technical or other expert assistance or testimony, or other consultation, accounting, data research, and the like, both the Contractor and the Department must agree to provide the special services, and the procedures in Subsection 105.19 for technical expert assistance will be followed.

The cost records and accounts pertaining to this Agreement shall be kept available for inspection by representatives of the Department or Contractor for 5 years after final payment.

## **APPENDIX A CLAIM REVIEW BOARD THREE-PARTY AGREEMENT**

(To be executed after appeal to Chief Engineer upon agreement of the parties)

## **I. Parties**

- A. Department
- B. Contractor
- C. Claim Review Board (CRB) Members:
  - 1.
  - 2.
  - 3.

## **II. Situation**

The Contractor and Department are now or have been engaged in the construction of the (project name). \_\_\_\_\_

The Contract provides for the submission of Claims which have been appealed to the Chief Engineer, to a Claim Review Board ("CRB") to assist in resolving Claims as defined therein.

## **III. Purpose**

The purpose of the CRB is to provide an independent and impartial review of the appealed Claim and non-binding written findings and recommendations based on the Contract, applicable contract law, industry practices and the facts presented. It is not the purpose, or responsibility, of the CRB to resolve the Claim. That responsibility remains with the Contractor and the Department. However, it is anticipated that the CRB's review and findings and recommendations will assist in the resolution of this matter.

## **IV. Scope of Work**

The scope of work of the CRB includes, but is not limited to, the following:

### **Project Site Visits**

The CRB will not typically visit the project site or meet with the Contractor and the Department during the construction of the project. However, the CRB may visit the project site if they deem it advantageous or necessary.

### **Establish Procedures**

Operating procedures will be in accordance with the Claim Review Board Specifications which are attached and incorporated herein by this reference and any modifications thereto contained in this Agreement.

### **Findings and Recommendations**

Upon receipt by the CRB of a written Request for Review of a Claim, signed by both the Contractor and the Department, the CRB shall set a date for presentations to review and consider the Claim, and thereafter issue written findings and recommendations to the Contractor and the Department.

It is expressly understood that all CRB members are to act impartially and independently in the

consideration of facts and conditions surrounding any claim. Prior to or during the presentation, no CRB member shall express any opinion concerning the merits of any facet of the case.

### **Other**

It is the express continuing responsibility of each member of the CRB to notify the Contractor and the Department and disclose immediately any and all existing or potential conflicts of interest, and/or inappropriate contact with either the Department or Contractor that may exist or develop during the term of this Agreement.

Except for providing the services required in the Agreement, the CRB and its individual members shall refrain from giving any advice to either the Contractor or the Department concerning conduct of the work or the resolution of problems which might compromise the integrity of the CRB.

### **Contractor Responsibilities**

Except for its participation in the CRB's activities as provided in the Contract and in this Agreement, the Contractor shall not solicit advice or consultation from the CRB or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the integrity of the CRB.

The Contractor shall furnish each CRB member and the Department with Contractor-prepared documents, to supplement the documents provided by the Department.

### **Department Responsibilities**

Except for its participation in the CRB's activities as provided in the Contract and in this Agreement, the Department shall not solicit advice or consultation from the CRB or its members on matters dealing with the conduct of the work or resolution of problems which might compromise the integrity of the CRB.

The Department shall:

Furnish each CRB member with a copy of the conformed Contract documents, including but not limited to the specifications, plans, and pertinent change orders.

In cooperation with the Contractor, coordinate the operations of the CRB.

Furnish conference facilities and provide secretarial and copying services.

### **Time for Beginning and Completion**

The CRB shall begin review of a specific Claim following execution of this Agreement, and shall terminate its activities upon issuance of its written findings and recommendations, unless the Contractor and the Department request subsequent services in writing.

### **Payment**

Payment to the CRB member(s) for their service hereunder shall be made in accordance with the "PAYMENT" section of the CRB Specification.

### **Termination of Agreement**

This Agreement may be terminated by mutual agreement of the Contractor and the Department at any time upon written notice to the members of the CRB.

CRB members may withdraw from the CRB by providing 28 calendar days written notice to the parties. Any CRB member may be removed from the panel reviewing a particular case by either the Contractor or the Department at any time by providing notice thereof to the other party and the remaining members of the CRB, and stating the reasons for the decision to remove a member.

Should the need arise to appoint a replacement member to the CRB on a particular claim, the replacement member shall be randomly selected from among the qualified alternate members of the CRB. The selection of a replacement CRB member shall begin promptly upon notification of the necessity and shall be completed within 14 calendar days. This Agreement will be amended to indicate changes in CRB membership.

### **Legal Relations**

Each CRB member, in the performance of his or her duties on the CRB, is acting in the capacity of an independent agent and not as an employee of either the Contractor or the Department.

Each CRB member is acting in a capacity intended to facilitate resolution of Claims. Accordingly, the Contractor and the Department agree that to the fullest extent permitted by law, each CRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with the review and findings and recommendations of Claims referred to the CRB. No CRB member may be called as a witness by either the Contractor or the Department in subsequent proceedings on the Claim. Other than the findings and recommendations of the CRB, all records, proceedings and deliberations of the CRB are to be kept confidential to the fullest extent permitted by law. The CRB shall, upon completion of the project, turn all records of the CRB over to the Department for storage and preservation in accordance with Department policy and state law.

Each CRB member shall be held harmless by the Contractor and the Department from any personal or professional liability arising from or related to CRB activities. To the fullest extent permitted by law, the Contractor and Department shall indemnify all CRB members for claims, losses, demands, costs, and damages (including reasonable attorney's fees) for bodily injury, property damage, or economic loss arising out of or related to CRB members carrying out CRB functions. The foregoing indemnity is a joint and several obligation of the Contractor and the Department.

The obligations and responsibilities of the CRB members under this Agreement shall not be assignable.

### Disputes Regarding This Three-Party Agreement

Disputes among the parties arising out of this Agreement which cannot be resolved by negotiation and mutual concurrence among the parties, and actions to enforce any right or obligation under this Agreement shall be initiated in the Fourth Judicial District Court in Ada County, Idaho.

All questions shall be resolved by application of Idaho state law.

The Department, the Contractor and the CRB members hereby consent to the personal jurisdiction of the Fourth Judicial District Court in Ada County, Idaho.

### Funding Agency Review

The funding agencies for the project on which the Claim arises have the right to review the CRB findings and recommendations and to attend CRB meetings and presentations, but not to participate in or attend private CRB deliberations.

### Effective Date

This Agreement is effective as of \_\_\_\_\_ .

CRB Member

\_\_\_\_\_

\_\_\_\_\_

date

CRB Member

\_\_\_\_\_

\_\_\_\_\_

date

CRB Member

\_\_\_\_\_

\_\_\_\_\_

date

Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Department

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_